IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8831 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARESHKUMAR MAGANBHAI PATEL

Versus

STATE OF GUJARAT THRO' THE SECRETARY

Appearance:

1. Special Civil Application No. 8831 of 2004

MR AR SHAIKH for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Banna Dutta for ld. counsel Mr.AR Shaikh for the petitioner detenu and ld.

AGP Ms. HB Punani for the State.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 17.06.2004 passed by the District Magistrate, Surat in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

3. The order under challenge is based on the grounds considered by the detaining authority that are conveyed to the detenu. It reveals that for passing the detention order, the detaining authority has mainly considered the fact of registration of two different offences registered against the present petitioner detenu under different sections of Bombay Prohibition Act between 04.11.2003 and 01.06.2004 i.e. within a span of about 07 months. Details qua all these offences are given in a tabular form in the grounds of detention supplied to the detenu. No statements were recorded by sponsoring authority making grievance against the behaviour or conduct of the present petitioner detenu in reference to the bootlegging activities of the detenu.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Ms. Dutta for the petitioner, has taken this Court through the contentions raised in the petition. However, ld. counsel has focussed arguments mainly on the ground that the order under challenge is not sustainable. It is submitted that in absence of statements from any witnesses from public, satisfaction recorded to the effect that activities of the petitioner detenu is prejudicial to the maintenance of public order, can not be said to be the satisfaction recorded objectively. At the most, it can be said to be a problem relating to maintenance of law and order and not the public order.

5. The next point pressed into service by ld. counsel appearing for the petitioner detenu is that the order of detention requires to be quashed and set aside as there is delay in dealing with representation as well as in communicating the decision on representation to the detenu. The representation made by the detenu has not been promptly considered and decision taken by the State

Government was not conveyed to the petitioner at the earliest. This delay goes to the root of the validity of the detention order and, therefore, the same can be terminated. While developing the submission, ld. counsel has pointed out that representation was made by the detenu to the detaining authority on 08.07.2004 and the same was not decided promptly and came to be decided by the State Government rejecting the same on 22.07.2004. So, time consumed between 08.07.2004 and 22.07.2004 in dealing with the representation requires to be explained because as per the settled legal position, non-explanation of delay or unsatisfactory explanation of the time consumed in deciding representation would go to the root of the validity of the detention order as well as continued detention of the detenu. Ld. counsel has also submitted that there is also delay of 06 days in communicating the decision on the representation to the detenu through jail authority. So, technically, there is about 20 days delay in dealing with and communicating the representation made by the detenu. It is, therefore, rightly argued that in view of the ratio of the decision of the Apex Court in the case of Harish Pahwa v/s State of U.P., AIR 1981 SC 1126, the impugned order of detention also requires to be quashed on the ground of delay in communicating decision on the representation to the detenu promptly. Relevant observations of the Apex Court are reproduced as under:-

> "..... We may make it clear, as we have done on numerous earlier occasions, that this Court does not look with equanimity upon such delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital import. We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This is not having been done in the present case we have no option but to declare the detention unconstitutional."

So, in view of above settled legal position, without entering into the merits of other submissions, on this sole ground, order of detention requires to be quashed and set aside.

6. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 17.06.2004 passed by the District Magistrate, Surat is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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